**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

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<td>RICHARD COCHRAN, RICHARD COWAN, RONALD S. EBERHART, GEORGE J. ELLIOTT, MIKE FAUSTINI, ROY HALL, JR., CHIP HERRON, LAWRENCE HODGE, RAYMOND C. MARCOTTE, LEE ROY MOORE, JOE F. MORGAN (MORGAN TRUCKING, LLC), BRYAN D. MUTCHIE, PRESTON NALE, AL NORDEN, and ORCUTT TRANSPORTATION SERVICES, LLC, individually and on behalf of others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>VOLVO GROUP NORTH AMERICA, LLC and VOLVO TRUCKS NORTH AMERICA, INC.,<br><br>Defendants.</td>
<td>Case No. _______________<br><br>CLASS ACTION<br><br>JURY TRIAL DEMANDED</td>
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## PLAINTIFFS' MASTER CLASS ACTION COMPLAINT

Plaintiffs RICHARD COCHRAN, RICHARD COWAN, RONALD S. EBERHART, GEORGE J. ELLIOTT, MIKE FAUSTINI, ROY HALL, JR., CHIP HERRON, LAWRENCE HODGE, RAYMOND C. MARCOTTE, LEE ROY MOORE, JOE F. MORGAN (MORGAN TRUCKING), BRYAN D. MUTCHIE, PRESTON NALE, AL NORDEN, and ORCUTT TRANSPORTATION SERVICES, LLC, (collectively referred to herein as "Plaintiffs"), bring this action against Defendant Volvo Group North America, LLC, and Volvo Trucks North

America, Inc. (collectively, "Defendant" or "Volvo"), individually and on behalf of all others similarly situated, and allege as follows:

## I. INTRODUCTION

1. This is a class action lawsuit brought by Plaintiffs on behalf of themselves and a nationwide class of current and former owners and lessees of Volvo trucks with Volvo D13 and D16 engines (the "Class Trucks").

2. The Volvo D13 and D16 truck engines ("Engines") have a common defect (the "Engine Defect") leading to repeated break downs and malfunctions. The nature of the defect is such that Volvo dealerships are unable to adequately repair the Engines in a timely manner, leading to significant lost income caused by Plaintiffs and the Class members having to bring their trucks in for multiple repair attempts and their trucks being unavailable and/or inoperable for extended periods of time, as well as excessive repair expenses once the warranty on the trucks has expired.

3. This action arises from Defendants' failure, despite their longstanding knowledge of a material design defect, to disclose to Plaintiffs and other consumers that the Volvo D13 and D16 Engines are defective and Defendants' inability or refusal to properly repair the engines.

4. The Engine Defect has caused and will inevitably continue to cause extensive damage to Plaintiffs and the Class as alleged herein.

5. Significantly, the Engine Defect poses a safety risk to the operator of the vehicle since the engine malfunctions can be sudden and cause accidents on the road.

6. Not only did Volvo actively conceal the Engine Defect, but Volvo did not reveal that the existence of the Engine Defect would diminish the intrinsic and resale value of the Class Trucks, which it does.

7. Volvo has long been well aware of the Engine Defect as evidenced by the numerous complaints that have been made to Volvo by Plaintiffs and others in similar situations.

8. Notwithstanding its longstanding knowledge of this design defect, Volvo has (a) refused to repair the Class Trucks' engines without charge when the Engine Defect manifests, (b) repaired the Class Trucks inadequately resulting in future malfunctions, and (c) taken an unreasonably long time to attempt to repair the Class Trucks resulting in substantial lost income resulting from inoperable Class Trucks.

## II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§1332(d)(2) and (6) of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding $5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because at least one plaintiff and one defendant are citizens of different states. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant transacts business in this district, is subject to personal jurisdiction in this district, maintains its headquarters in this district and therefore is deemed to be a citizen of this district. Additionally, Defendant has advertised in this district and has received substantial revenue and profits from its dealerships' sales and/or leasing of Class Trucks in this district; therefore, a substantial part of the events and/or omissions giving rise to the claims occurred, in part, within this district.

11. This Court has personal jurisdiction over Defendant because Volvo Group North America, LLC, and its division Volvo Trucks North America, Inc., are corporations duly

organized and existing under the laws of the State of Delaware, with their principal place of business in Guilford County, North Carolina.

12. Defendants have conducted substantial business in this judicial district, and intentionally and purposefully placed Class Trucks into the stream of commerce throughout the United States.

## III. THE PARTIES

### A. The Plaintiffs

13. Plaintiff, Richard Cochran ("Cochran"), is an individual residing in Marion County, Summerfield, Florida.

14. Plaintiff, Richard Cowan ("Cowan"), is an individual residing in Van Zandt County, Ben Wheeler, Texas.

15. Plaintiff, Ronald S. Eberhart ("Eberhart"), is an individual residing in Carroll County, Temple, Georgia.

16. Plaintiff, George J. Elliott ("Elliott"), is an individual residing in Cuyahoga County, Mayfield Heights, Ohio.

17. Plaintiff, Mike Faustini ("Faustini"), is an individual residing in Escambia County, Riverview, Florida.

18. Plaintiff, Roy Hall, Jr. ("Hall"), is an individual residing in Posey County, Wadesville, Indiana.

19. Plaintiff, Chip Herron ("Herron"), is an individual residing in Salt Lake County, Murray, Utah.

20. Plaintiff, Lawrence Hodge ("Hodge"), is an individual residing in Sumter County, Sumter, South Carolina.

21. Plaintiff, Raymond C. Marcotte ("Marcotte"), is an individual residing in Rooks County, Plainville, Kansas.

22. Plaintiff, Lee Roy Moore ("Moore"), is an individual residing in Ottawa County, Quapaw, Oklahoma.

23. Plaintiff, Joe F. Morgan (Morgan Trucking, LLC) ("Morgan"), is an Alabama limited liability company doing business in Etowah County, Gadsen, Alabama.

24. Plaintiff, Bryan D. Mutchie ("Mutchie"), is an individual residing in Logan County, Sterling, Colorado.

25. Plaintiff, Preston Nale ("Nale"), is an individual residing in Sevier County, Sevierville, Tennessee.

26. Plaintiff, Al Norden ("Norden"), is an individual residing in Ottawa County, Genoa, Ohio.

27. Plaintiff, Orcutt Transportation Services, LLC ("Orcutt"), is an Oklahoma limited liability corporation incorporated in Oklahoma and doing business in Yukon, Oklahoma.

**B. The Defendants**

28. Defendant Volvo Group North America, LLC is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Guilford County, North Carolina.

29. Defendant Volvo Trucks North America, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Guilford County, North Carolina.

## IV. TOLLING OF STATUTES OF LIMITATION

30. All limitations periods were tolled by the doctrines of fraudulent concealment, the discovery rule and/or equitable tolling. Defendants knowingly and actively concealed and denied the facts alleged herein. Plaintiffs and members of the class could not have reasonably discovered the true, latent defective nature of the Engine Defect until shortly before this class action litigation was commenced. As alleged herein, Volvo wrongfully concealed the fact (1) that it was equipping vehicles with defective engines which Volvo and its dealerships were unable and/or unwilling to repair in an adequate and timely manner, and (2) that its dealerships were making inadequate repairs incapable of addressing the root cause of the Class Vehicles' engine malfunctions.

31. Defendants were and remain under a continuing duty to disclose to Plaintiff and members of the class the true character, quality and nature of the Class Trucks, that this defect is based on a poor design, that the defect will require costly repairs, poses a safety concern, and diminishes the resale value of the Class Trucks, and that Volvo dealerships are unable to properly and timely repair the defect. As a result of the active concealment by Defendants, any and all applicable statutes of limitations otherwise applicable to the allegations herein have been tolled.

32. Plaintiffs and Class Members did not discover the operative facts that are the basis of their claims because they were concealed in confidential and privileged documents. No amount of diligence by Plaintiffs or Class Members could have led to discovery of these facts because they were kept secret by Volvo and, therefore, Plaintiffs and Class Members were not at fault for failing to discover these facts, nor did they have actual or presumptive knowledge of facts sufficient to put them on inquiry. No class member knew, or could have known, about

Volvo's inability to repair the defect in its engines because, as alleged above, Volvo kept this information highly confidential, and made inadequate and untimely repairs rather than admitting that it was unable to make adequate and timely repairs.

## V. FACTUAL ALLEGATIONS

### A. The D13 and D16 Engines

33. In 1996, Volvo Trucks North America, Inc., Inc. was created to manufacture, market, and sell trucks in the United States.

34. In 2000, Volvo acquired Renault and Mack Trucks, becoming the second largest Class 8 truck maker in North America. Since then it has grown to be the largest.

35. In November 2002, Volvo began producing Volvo engines in conjunction with the EPA's new emission regulations.

36. In 2005, Volvo introduced the Volvo D13 and D16 engines, touting the D16 as having more horsepower and torque than any other engine in North America.

37. In 2007, Volvo introduced the D13 and D16 engines with an Exhaust Gas Recirculation ("EGR") configuration and Variable Geometry Turbo ("VGT") turbocharger.

38. Volvo touts its D13 engine as a "very fuel-efficient, powerful and lightweight engine, designed to meet current and future EPA regulations while improving reliability and lowering operating costs." http://www.volvotrucks.com/trucks/na/en-us/products/engines/D13/Pages/overview.aspx. Volvo represented that "[t]he engine provides impressive performance with excellent low-end torque for improved drivability. The new variable geometry turbo also makes the engine very responsive while improving fuel economy." *Id.* Volvo stated that the D13 engine was "the perfect choice for line haul, regional and vocational operations"

and "delivers a reliable, cost-effective and powerful solution—in a light, high-performance package—for a wide variety of applications." *Id.*

39. Regarding its D16 engine, Volvo represented:

> EXTRA POWER FOR BIG LOADS AND STEEP GRADES. With our D16 engine, Volvo takes power and performance to the next level. This ultra-reliable engine delivers the increased horsepower and torque needed to move large payloads with ease, even on steep grades.

http://www.volvotrucks.com/trucks/na/en-us/products/engines/D16/Pages/overview.aspx. Volvo also represented that "[t]he Volvo D16 features advanced technology that requires less oil, fuel and maintenance." *Id.* Volvo represented that the D16 engine "delivers impressive power in any situation with up to 1,850 lbs. ft. of torque for excellent drivability [and t]he variable geometry turbo also makes the engine very responsive while maximizing fuel economy." *Id.* Volvo stated that the D16 is "the perfect choice for line haul and heavy haul operations [and] puts out an impressive 420 braking hp and a whopping 600 hp at 2200 rpm." *Id.* Volvo represented that the "oil drain interval of up to 35,000 miles with the low maintenance oil pan, which is an option in the VNL, helps to reduce operating costs [and t]he D16 engine offers a dependable, fuel-efficient solution for heavy haul applications that require maximum muscle under the hood."

40. Volvo manufactures the engines at issue in this litigation in Hagerstown, Maryland, and manufactures the trucks in Dublin, Virginia.

41. The Engine Defect present in the Volvo D13 and D16 engines impact and originate in its EGR system, turbochargers, injectors and other related components, leading to repeated and serious malfunctions.

42. The Engine Defect has caused and will inevitably continue to cause extensive damage to Plaintiffs and the Class members by causing lost income, excessive repair expenses, excessive towing expenses, and other actual and consequential damages.

43. Significantly, the Engine Defect poses a safety risk to the operator of the vehicle since the engine frequently breaks down without warning causing the vehicle to become inoperable without giving the operator the chance to move the vehicle off the road to a safe location.

## B. Plaintiffs and the Class experienced these same symptoms in their Engines, and Volvo failed to repair them under warranty

44. Plaintiffs and Class members are owners, lessees and/or operators of Class Trucks with the Engine Defect.

45. Plaintiffs and Class members have, at all times, maintained their vehicles properly.

46. Plaintiffs experienced repeated, common issues with their engines.

47. Plaintiffs and Class members have repeatedly brought their vehicles to authorized Volvo dealerships for warranty repair, but Volvo has failed to fulfill its obligation under its warranty obligations by failing to properly and timely repair the engines.

48. Plaintiffs and Class members herein complain that the engines in their vehicles are defective, forcing them to repeatedly bring their vehicles to Volvo dealerships for repair, only to have the vehicles break down again due to the defective nature of the engine and/or the inability of Volvo, through its dealerships, to repair them properly.

49. Moreover, when Plaintiffs and Class members brought their vehicles to authorized Volvo dealerships during the warranty period and complained about problems they were having, Volvo generally failed to authorize the replacement of the defective engines despite the fact that Volvo knew the engines were defective, knew that the mechanics in its dealerships were not properly repairing the engines, and knew that the limited repair work Volvo authorized

its dealerships to perform would not properly repair the vehicles. When Volvo did authorize a repair, the repair was either inadequate, untimely, or both.

50. Volvo dealerships cannot provide warranted repairs (*i.e.*, repairs at no cost to the customer) beyond those authorized by Volvo. Accordingly, Volvo's routine failure to authorize the work necessary to properly repair Class Trucks with the Engine Defect resulted in a breach of Volvo's warranty obligations.

51. Volvo's limited warranty of repairing and replacing defects failed of its essential purpose because Volvo failed to give its dealerships permission and/or the capability to make necessary warranted repairs in an adequate and timely manner. Accordingly, they failed to properly repair Plaintiffs and Class members' Class Vehicles.

52. Volvo, notwithstanding its knowledge of the Engine Defect, has not conducted sufficient recalls, has not notified Plaintiffs of the extent of the engines' inadequacies, has misrepresented the supposed attributes of the Class Vehicles' engines, has failed to disclose a known defect in the engines, and has failed to effectively repair or replace the engines and/or parts, or to reimburse Plaintiffs for their damages.

53. The defective engines in the Class Trucks have caused Plaintiffs and Class members to suffer a loss of profits as a result of the inability to use the vehicles. Plaintiffs and Class members have also suffered diminution in the value of their vehicles; out-of-pocket expenses for ongoing necessary repairs and/or services to the units; towing costs for disabled units; expenses associated with leasing or renting temporary vehicles while their Class Vehicles were being repaired; and other damages.

54. Any limitations and exclusions in Volvo's warranty are procedurally and substantively unconscionable because they are inordinately one-sided in Volvo's favor in light of

the fact that Volvo knew of the inherent defect in the Class Vehicles' engines and nevertheless continued to sell Class Vehicles with defective engines without disclosing the inherent defect.

55. The unconscionability of Volvo's remedy limitations and exclusions is exacerbated by the fact that Volvo knew it was selling Class Vehicles with defective engines, and knew that its dealerships were consistently failing to repair the defect. Accordingly, Volvo attempted to limit its customers' remedies to repairs that it knew would fail to fix the engine, and thus the limited warranty failed of its essential purpose and is unenforceable.

56. Plaintiffs and Class members notified Volvo (through authorized Volvo dealerships) of the multiple problems caused by the Engine Defect each time Plaintiffs brought their vehicles in for repair. Plaintiffs also notified Volvo directly. Plaintiffs, however, were not required to provide such notice because affording Volvo a reasonable opportunity to cure its breach of written warranty would have been futile.

57. As stated above, the Volvo dealerships' experience with failed and untimely repairs of Class Vehicles demonstrate the ongoing problems with the Engine Defect, the fact that Volvo was well aware of the problems with these engines, and Volvo's failure to adequately address the issues by failing to properly and timely repair or replace these defective engines.

58. Additionally, the Class Vehicles' defective engines present a safety hazard and are unreasonably dangerous to owners of these vehicles because the defect can cause and has caused sudden and unexpected engine stalling or complete loss of power while driving, thereby contributing to the risk of accidents, which can cause personal injury or death.

59. Because of Volvo's failure to properly repair the defective engines, Plaintiffs and Class Members have spent an unprecedented amount of time and money making repeat visits to

various Volvo dealership service departments attempting to resolve the engine problems to no avail.

## PLAINTIFFS' EXPERIENCES WITH THE ENGINES

### A. Richard Cochran

60. Richard Cochran ("Cochran") is an individual residing in Marion County, Summerfield, Florida.

61. Cochran purchased a 2008 Model Year Class Truck, VIN 4V4NC9GH32N333624 on or about June 25, 2007.

62. Due to the Engine Defect, Cochran experienced repeated malfunctions including coolant leaks; turbocharger malfunctions; injector malfunctions; and exhaust leaks.

63. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Cochran experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

### B. Richard Cowan

64. Richard Cowan ("Cowan") is an individual residing in Van Zandt County, Ben Wheeler, Texas.

65. Cowan purchased a 2008 Model Year Class Truck, Model VNL64T880, VIN 4V4LC9KL48N489067 on or about May 21, 2009.

66. Due to the Engine Defect, Cowan experienced repeated malfunctions including check engine light repeatedly illuminated; oil leaks; coolant leaks; exhaust leaks; and EGR cooler malfunctions.

67. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Cowan experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**C. Ronald S. Eberhart**

68. Ronald Eberhart ("Eberhart") is an individual residing in Carroll County, Temple, Georgia.

69. Eberhart purchased a 2008 Model Year Class Truck, Model VNL64T, VIN 4V4NC9KJ98N491405 on or about July 17, 2007.

70. Due to the Engine Defect, Eberhart experienced repeated malfunctions including oil leaks; coolant leaks; injectors replaced numerous times; and poor fuel mileage.

71. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Eberhart experienced excessive repair costs, down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose. Eventually Eberhart's inability to use his truck resulted in it being repossessed.

72. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Eberhart experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**D. George J. Elliott**

73. George Elliott ("Elliott") is an individual residing in Cuyahoga County, Mayfield Heights, Ohio.

74. Elliott purchased a 2007 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KK77N478868 on or about August 25, 2008.

75. Due to the Engine Defect, Elliott experienced repeated malfunctions including oil leaks; engine harness replacement; EGR sensor malfunction; turbocharger malfunction; coolant leaks; and EGR cooler malfunction.

76. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Elliott has experienced excessive repair costs, down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**E. Mike Faustini**

77. Mike Faustini ("Faustini") is an individual residing in Escambia County, Riverview, Florida.

78. Faustini purchased a 2009 Model Year Class Truck, Model VNL64T7300, VIN 4V4NC9KJ59N270918 on or about December 22, 2008.

79. Due to the Engine Defect, Faustini experienced repeated malfunctions including engine harness malfunction; excessive engine vibration and driveline problems; injector replacements; coolant leaks; oil leaks; exhaust leaks; turbocharger malfunction, and an eventual engine replacement. He experienced excessive down time, rental truck expense and other related expenses because his truck was in the shop 390 days out of the first two years he owned it. The excessive engine vibration also caused the rapid and premature tire wear that increased tire replacement costs.

80. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Faustini experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**F. Roy Hall, Jr.**

81. Roy Hall, Jr. ("Hall") is an individual residing in Posey County, Wadesville, Indiana.

82. Hall purchased a 2007 Model Year Class Truck, Model VNL64T830, VIN 4V4LC9KL17N480874 on or about November 11, 2006.

83. Due to the Engine Defect, Herron experienced repeated engine malfunctions.

84. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Herron experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**G. Chip Herron**

85. Chip Herron ("Herron") is an individual residing in Salt Lake County, Murray, Utah.

86. Herron purchased a 2009 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KJ39N265393 on or about August 2, 2008.

87. Due to the Engine Defect, Herron experienced repeated malfunctions including injector replacements, coolant leaks, and EGR valve and wiring harness malfunctions.

88. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Herron experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**H. Lawrence Hodge**

89. Lawrence Hodge ("Hodge") is an individual residing in Sumter County, Sumter, South Carolina.

90. Hodge purchased a 2006 Model Year Class Truck, Model VNL64T, VIN 4V4LC9KL36N421954 on or about February 25, 2006.

91. Due to the Engine Defect, Hodge experienced repeated malfunctions including oil leaks; coolant leaks; engine harness malfunctions; turbocharger malfunctions; EGR Cooler malfunctions; EGR valve malfunctions; injector malfunctions and had to have a replacement engine installed.

92. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Hodge experienced excessive repair costs, down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**I. Raymond C. Marcotte**

93. Raymond Marcotte ("Marcotte") is an individual residing in Rooks County, Plainville, Kansas.

94. Marcotte purchased a 2008 Model Year Class Truck, Model VNL64T, VIN 4V4NC9EJ88N490919 on or about July 14, 2008.

95. Due to the Engine Defect, Marcotte experienced repeated malfunctions including injector replacements, coolant leaks, EGR cooler malfunctions, turbocharger malfunctions; EGR valve malfunctions; and excessive soot in the engine.

96. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Marcotte experienced excessive repair costs, down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**J. Lee Roy Moore**

97. Leroy Moore ("Moore") is an individual residing in Ottawa County, Quapaw, Oklahoma.

98. Moore purchased a 2008 Model Year Class Truck, Model VNL64T880, VIN 4V4NC9KJ58N490848 on or about August 22, 2008.

99. Due to the Engine Defect, Moore experienced repeated malfunctions including coolant leaks; turbocharger malfunctions; exhaust leaks; oil cooler malfunctions; EGR valve malfunctions; and EGR cooler malfunctions.

100. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Moore experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**K. Joe F. Morgan (Morgan Trucking)**

101. Joe F. Morgan (Morgan Trucking, LLC) ("Morgan") is an Alabama limited liability company doing business in Etowah, Gadsen, Alabama.

102. Morgan purchased a 2009 Model Year Class Truck, Model VNL64T300, VIN 4V4NC9KJX9N263432 on or about August 2, 2008.

103. Due to the Engine Defect, Morgan experienced repeated malfunctions including injector malfunctions; turbocharger malfunctions; driveline problems; and an exhaust defect that caused a fire.

104. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Morgan experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose, along with lodging related expense which the truck was in the shop for repairs.

**L. Bryan D. Mutchie**

105. Bryan Mutchie ("Mutchie") is an individual residing in Logan County, Sterling, Colorado.

106. Mutchie purchased a 2007 Model Year Class Truck, Model VNL64T880, VIN 4V4LC9KK47N485171 on or about April 16, 2008.

107. Due to the Engine Defect, Mutchie experienced repeated malfunctions including turbocharger malfunctions; cylinder head malfunctions; exhaust leaks; exhaust manifold malfunctions; coolant leaks; oil leaks; injector malfunctions; and excessive soot.

108. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Mutchie experienced excessive down time and resulting lost revenue along with lodging and other incidental expenses while his truck was out of service and unable to be used for its intended purpose.

**M. Preston Nale**

109. Preston Nale ("Nale") is an individual residing in Sevier County, Sevierville, Tennessee.

110. Nale purchased a 2009 Model Year Class Truck, Model VNL64T300, VIN 4V4NC9KJ39N263434 on or about November 14, 2008.

111. Due to the Engine Defect, Nale experienced repeated malfunctions including coolant leaks and injector malfunctions and replacements.

112. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Nale experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**N. Al Norden d/b/a Ants, Inc.**

113. Al Norden (d/b/a Ants, Inc.) ("Norden") is an individual residing in Ottawa County, Genoa, Ohio.

114. Herron purchased a 2007 Model Year Class Truck, Model VNL64T, VIN 4V4NC9KJ97N453655 on or about January 9, 2007.

115. Due to the Engine Defect, Norden experienced repeated malfunctions including injector malfunctions; rocker arm malfunctions; and turbocharger malfunctions.

116. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Norden experienced excessive down time and resulting lost revenue while his truck was out of service and unable to be used for its intended purpose.

**O. Orcutt Transportation Services, LLC**

117. Orcutt Transportation Services, LLC ("Orcutt") is an Oklahoma limited liability corporation incorporated in Oklahoma and doing business in Yukon, Oklahoma.

118. Orcutt purchased a 2009 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KJX9N285155 on or about November 10, 2008.

119. Due to the Engine Defect, Orcutt experienced repeated malfunctions including oil leaks; and coolant leaks.

120. Orcutt purchased a 2009 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KJ69N277571 on or about July 30, 2008.

121. Due to the Engine Defect, Orcutt experienced repeated malfunctions including coolant leaks; exhaust leaks; injector malfunctions and valve malfunctions.

122. Orcutt purchased a 2008 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KJ98N486074 on or about February 5, 2008.

123. Due to the Engine Defect, Orcutt experienced repeated malfunctions including turbo charger malfunctions; coolant leaks; injector malfunctions; EGR malfunctions; and excessive soot.

124. Orcutt purchased a 2008 Model Year Class Truck, Model VNL64T730, VIN 4V4NC9KJ88N486079 on or about January 21, 2008.

125. Due to the Engine Defect, Orcutt experienced repeated malfunctions including coolant leaks; injector malfunctions; excessive soot; EGR malfunctions; turbocharger malfunctions; wiring harness malfunctions; oil cooler malfunctions; EGR valve malfunctions; and head replacement.

126. Due to the repeated malfunctions and the inability of Volvo dealerships to repair them in a proper and timely manner, Orcutt was forced to default on its loans on all four trucks, resulting in the four trucks and three trailers being repossessed.

## VI. CLASS ACTION ALLEGATIONS

127. Plaintiffs bring this action on their own behalf, and on behalf of a nationwide class pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the nationwide class consists of:

> All current or former owners and/or lessees of a Volvo truck with a Volvo D13 or D16 engine residing in the United States, including its territories and Washington D.C. (the "Nationwide Class").

128. In the alternative, if the Court declines to certify the Nationwide Class, Plaintiffs seek (pursuant to FED. R. CIV. P. 23(c)(5)) to represent individual state subclasses defined, respectively, as: All members of the Nationwide Class residing in each of the following states: Florida, Texas, Georgia, Ohio, Indiana, Utah, S. Carolina, Kansas, Oklahoma, Alabama, Colorado, and Tennessee. Each Subclass is referred to by the name of the applicable state (for

example, the Florida Subclass, the Texas Subclass, etc.) and they are collectively referred to herein as the "State Sub-Classes."

129. Excluded from the Class and the State Sub-Classes are Defendants, their officers and directors, and the Judge(s) assigned to this case. Plaintiffs reserve the right to modify the Class and State Sub-Class definitions if discovery and/or further investigation reveals that they should be expanded or otherwise modified.

130. Numerosity: Upon information and belief, the Class and each of the State Sub-Classes are so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Class and State Sub-Classes are unknown at this time, such information being in the sole possession of Defendants and obtainable by Plaintiffs only through the discovery process, Plaintiffs believe that, with Volvo being the largest Class 8 truck manufacturer in North America, there are at least hundreds of members of each Sub-Class, and at least thousands of members of the Class.

131. Existence and Predominance of Common Questions of Fact and Law: Common questions or law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class members. These common legal and factual questions include, but are not limited to:

a. whether the engines in Class Trucks are predisposed to fail prematurely;

b. whether the engines in Class Trucks contain a design defect;

c. whether the defective engine design is common to all or some of the Class Trucks;

d. if so, whether the Engine Defect causes the malfunctions experienced by the Class members with their Class Trucks;

e. whether Defendants knowingly failed to disclose the existence and cause of the Engine Defect in Class Trucks;

f. whether, as a result of Defendants' omissions and/or misrepresentations of material facts related to the Engine Defect, Plaintiffs and members of the Classes have suffered ascertainable loss of moneys and/or property and/or value;

g. whether Plaintiffs and Class members are entitled to monetary damages and/or other remedies, and if so the nature of any such relief.

132. Typicality: All of the Plaintiffs' claims are typical of the claims of the Class since each Plaintiff purchased a class vehicle with the Engine Defect, as did each member of the Class. Furthermore, Plaintiffs and all members of the Class sustained monetary and economic injuries including, but not limited to, repair expenses and lost income due to incapacitated Class Trucks arising out of Defendants' wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

133. Adequacy: All of the Plaintiffs are adequate representatives because their interests do not conflict with the interests of the Class that they seek to represent, they have retained counsel competent and highly experienced in complex class action litigation, and they intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs and their counsel.

134. Superiority: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiffs and members of the Class. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to redress

effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, it would overly burden the court system and cause inefficiencies with the same issues decided by multiple courts. Individualized litigation presents a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on, *inter alia*, Defendants' vehicle identification numbers, warranty claim records, registration records, and the Class members' records.

135. Defendants have acted, and refused to act, on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

## VII. CAUSES OF ACTION

### Count 1: Breach of Express Warranty (On Behalf of the Nationwide Class or, Alternatively, each of the State Sub-Classes)

136. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

137. Defendants expressly warranted that the Class Trucks were of high quality and, at a minimum, would actually work properly.

138. Defendant provides a Standard Volvo Engine Warranty that warrants Volvo engines to be free from Defect in material and workmanship under normal use and service up to specified time and mileage limits, provided Volvo's maintenance requirements are followed.

139. Volvo also provides extended coverage plans to provide coverage for engine failures that occur after the Standard Volvo Engine Warranty has expired.

140. Volvo's warranties require Volvo to repair or replace defective parts when vehicles are brought to authorized Volvo truck dealers during the applicable time and mileage limits.

141. Defendants breached this warranty by selling Plaintiffs and Class members the Class Trucks with the known Engine Defect, making them of low quality and causing them to fail prematurely and/or fail to function properly.

142. Defendants further breached this warranty by failing to repair and/or replace Plaintiffs' engines adequately and in a timely manner when the engines failed during the applicable warranty periods.

143. Plaintiffs and Class members repeatedly brought their vehicles to authorized Volvo mechanics, in compliance with their warranty obligations, and the Volvo mechanics (which were obligated to carry out Volvo's warranty obligations) repeatedly failed to satisfy Volvo's obligations by failing to make adequate and timely repairs.

144. Volvo knew of the Engine Defect soon after trucks including the Engine Defect began to be sold, as evidenced by the huge number of vehicles being brought to Volvo dealerships for repair, and the huge number of repeat visits from Class members evidencing that Volvo's standard repair procedures were not adequately repairing the Engine Defect.

145. Despite Volvo's knowledge, Volvo continues to breach its express warranty, and has intentionally failed to notify Plaintiffs and members of the Plaintiff Class of the Engine Defect.

146. This intended failure to disclose known defect(s) is malicious, and was carried out with willful and wanton disregard for the rights and economic interests of Plaintiffs and Class members.

147. As a result of the Defendants' actions, Plaintiffs and Class members have suffered economic damages including but not limited to costly repairs, loss of vehicle use, lost income, substantial loss in value and resale value of the Class Trucks, and other related damage.

148. Defendants' breach of this warranty caused damages to Plaintiffs and Class members.

149. Defendants' attempt to disclaim or limit these express warranties is unconscionable and unenforceable under the circumstances here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold a defective product without informing consumers about the defect, and lacking the ability to comply with their warranty obligations to repair the defect.

150. The time limits contained in Defendants' warranty period were also unconscionable and inadequate to protect Plaintiffs and members of the Class. Among other things, Plaintiffs and Class members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Volvo and Class members, and Volvo knew or should have known that the Class Trucks were defective at the time of sale and would fail well before their useful lives.

151. Plaintiffs and Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

**COUNT 2: Breach of The Implied Warranty of Merchantability**
**(On Behalf of the Nationwide Class or,**
**Alternatively, each of the State Sub-Classes)**

152. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

153. Defendant Volvo is a "merchant" as defined under the Uniform Commercial Code ("UCC").

154. The Class Trucks are "goods" as defined under the UCC.

155. Defendants impliedly warranted that the Class Trucks were of a merchantable quality.

156. Defendants breached the implied warranty of merchantability, as the Class Trucks were not of a merchantable quality due to the Engine Defect.

157. As a direct and proximate result of the breach of said warranties, Plaintiffs and Class members were injured, and are entitled to damages.

158. Defendants' attempt to disclaim or limit the implied warranty of merchantability is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold a defective product without informing purchasers about the defect.

159. The time limits contained in Defendants' warranty period were also unconscionable and inadequate to protect Plaintiffs and member of the Class. Among other things, Plaintiffs and members of the Class had no meaningful choice in determining these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Volvo and Class members, and Volvo knew or should have

known that the Class Trucks were defective at the time of sale and that the engines would fail well before their useful lives.

160. Plaintiffs and Class members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

**COUNT 3: Common Law Fraud**
**(On Behalf of the Nationwide Class or, Alternatively, each of the State Sub-Classes)**

161. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

162. Defendants made material misrepresentations and omissions concerning a presently existing or past fact. For example, Defendants did not fully and truthfully disclose to its customers the true nature of the inherent engine design defect, which was not readily discoverable until years later, often after the warranty had expired. As a result, Plaintiffs and the other Class Members were fraudulently induced to lease and/or purchase the Class Trucks with the said design Defect and all of the resultant problems.

163. These omissions and statements were made by Defendants with knowledge of their falsity, and with the intent that Plaintiffs and Class members rely on them.

164. Plaintiffs and Class members reasonably relied on these statements and omissions, and suffered damages as a result.

**COUNT 4: Breach of The Duty of Good Faith and Fair Dealing**
**(On Behalf of the Nationwide Class or,**
**Alternatively, each of the State Sub-Classes)**

165. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

166. Every contract contains an implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing is an independent duty and may be breached even if there is no breach of a contract's express terms.

167. Defendants breached the covenant of good faith and fair dealing by, *inter alia*, failing to notify Plaintiffs and Class members of the engine defect in the Class Trucks, and failing to fully and timely repair this defect.

168. Defendants acted in bad faith and/or with a malicious motive to deny Plaintiffs and Class members some benefit of the bargain originally intended by the parties, thereby causing them injuries in an amount to be determined at trial.

**Count 5: Violation of the Florida Deceptive And Unfair Trade Practices Act**
**(On Behalf of the Florida Sub-Class)**

169. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

170. The purpose of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") is "to protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." FLA. STAT. § 501.202 (2).

171. Defendants have engaged in unfair competition and unfair, unlawful or fraudulent business practices by the practices described above, and by knowingly and intentionally concealing from Plaintiff and Class members the fact that the engines in the Class Trucks suffer

from a design defect (and the costs, risks, and diminished value of the Class Trucks as a result of this problem). Defendants should have disclosed this information because they were in a superior position to know the true facts related to this design defect, and Plaintiffs and Class members could not reasonably be expected to learn or discover the true facts related to this defect.

172. These unfair methods of competition and unfair and deceptive acts have caused injuries to Plaintiffs and members of the Class.

**Count 6: Violation of the South Carolina Unfair Trade Practices Act**
**(Asserted on Behalf of South Carolina Plaintiff and the South Carolina Sub-Class)**
**(S.C. CODE ANN. § 39-5-10 *et seq.*)**

173. Plaintiffs and the Classes incorporate in this Count each paragraph in this Complaint as though fully set forth at length in this Count.

174. Volvo is a "person" engaged in "trade" and "commerce" within the meaning of S.C. CODE ANN. § 39-5-10.

175. The South Carolina Unfair Trade Practices Act ("SCUTPA") declares unlawful "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." S.C. CODE ANN. § 39-5-20.

176. By misrepresenting the characteristics of the Class Vehicles, failing to disclose the Engine Defect in the Class Vehicle, and failing to properly repair the defective engines, as fully set forth above, Volvo engaged in unlawful, unfair, or deceptive acts or practices prohibited by the SCUTPA.

177. Volvo owed South Carolina Plaintiff and the South Carolina Sub-Class a duty to disclose the Defect in the Volvo Class Vehicles equipped with defective Engines because it possessed exclusive and superior knowledge of the defect and did not disclose the defect.

178. Information regarding the defect, which result in substantial additional repair costs, decreased vehicle performance, and/or vehicle failure, is material to a reasonable customer in deciding to purchase a vehicle and considering how much to pay for a vehicle.

179. A reasonable customer with knowledge of the defective nature of the Class Vehicles' engines would not have purchased Volvo Class Vehicles equipped with the defective engine or would have paid less for them.

180. Volvo's unfair or deceptive acts or practices were therefore likely to or had a tendency or capacity to deceive reasonable consumers about the true nature of the Volvo Class Vehicles equipped with the defective engines.

181. Volvo's actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as hundreds of others who purchased and/or leased Volvo vehicles equipped with the defective engines as a result of and pursuant to Volvo's generalized course of deception.

182. As result of its violations of the SCUTPA, Volvo caused actual damage to South Carolina Plaintiff and the South Carolina Sub-Class including, inter alia, substantial time and money dedicated to repeat visits to various Volvo dealership service departments attempting to resolve the engine problems to no avail.

183. Volvo's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton, and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

184. As a result of the foregoing acts, omissions, and practices South Carolina Plaintiff and other members of the South Carolina Sub-Class suffered actual damages as described herein, and these class members are entitled to recover such damages, together with punitive damages,

equitable relief, injunctive relief, diminution of value, reasonable attorneys' fees, costs of suit, and such other relief set forth below.

## VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and members of the Class, respectfully request that this Court:

a. determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;

b. appoint Plaintiffs as the representatives of the Class and their counsel as Class counsel;

c. award all actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiffs and Class members are entitled;

d. award pre-judgment and post-judgment interest on such monetary relief;

e. grant appropriate injunctive and/or declaratory relief, including, without limitation, an order that requires Defendants to repair, recall, and/or replace the engines in the Class Trucks and to extend the applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiffs and Class members with appropriate curative notice regarding the existence and cause of the Engine Defect;

f. award reasonable attorney's fees and costs; and

g. grant such further relief that this Court deems appropriate.

Dated: October 28, 2011

Respectfully submitted,

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